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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,383	06/27/2003	Deborah Watson	20022195.01	4787
7590 07/05/2005 SWARTZ & WILSON, P.L.C. SUITE 200 908 COURT STREET SAGINAW, MI 48602			EXAMINER NERBUN, PETER P	
			ART UNIT 3765	PAPER NUMBER

DATE MAILED: 07/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/606,383

Applicant(s)

WATSON, DEBORAH

Examiner

Peter P. Nerbun

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 8-10 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 37 and 38 is/are allowed.
- 6) ☒ Claim(s) 1-3,5,11-14,16,19,21-28,30-34 and 36 is/are rejected.
- 7) ☒ Claim(s) 4,6,7,15,17,18,20,29 and 35 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 June 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 06272003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

In paper no. 04112005, in the Remarks/Arguments section, applicant refers to the instant application by an incorrect Application Number (10/606,397). In future communications applicant should use Application Number 10/606,383 to correctly refer to the instant application.

Claim 21 is objected to for containing a grammatical error. In claim 21, line 2, after "means", --that-- should be inserted.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "28B" has been used to designate both a water impervious strip (see page 9, line 11 of the specification) and a heat resistant strip (see page 9, line 12). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are further objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign mentioned in the description: reference numeral "60" recited on page 9, line 12 of the specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office

action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Appropriate correction is required.

Claims 37 and 38 are allowed.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,5,11-14,16,19,21,22,24,25,30-34, and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Yonan (U.S.P. 3,525,103). The patent to Yonan discloses an ear cover comprising flexible fluid impervious strip shield means 12, Fig. 3 for covering the ear including central non-adhesive ear engaging means 14, Figs. 3, 4, having a length and width sufficient to cover a folded ear when laid thereover. The shield means 12 is structurally adapted to hold the ear in a forwardly folded condition and for bearing against a folded ear in said forwardly folded condition since the shield means is properly sized to perform both of those functions. Border strip adhesive

means 24 surrounds said central non-adhesive ear engaging means for adhesively sealing to a portion of the person's head surrounding the ear. With regard to claim 14 and 27, note that Yonan discloses an adhesive layer sandwiched between the ear engaging sheet 12 and mounting sheet 14. This adhesive layer would resist the transfer of heat since adhesive has heat insulative properties. Regarding claims 19 and 28, it is noted that bells have numerous shapes including concave receptacles of the type shown by Yonan.

Claims 4,6,7,15,17,18,20,29, and 35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 8-10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 11, 2005

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23 and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yonan in view of Jackson (U.S.P. 5,615,417). To construct the ear cover of Yonan with the ear engaging sheet 14, Fig. 3 being formed from a layer of open cell material as suggested by Jackson (note that Jackson states that the ear engaging sheet 44 can be made of foam which is well known to encompass a material having an open cell

structure) would have been obvious since the ear engaging sheet would provide greater comfort if the wearer struck his ear against a hard surface such as a hair dryer.

The following is a statement of reasons for the indication of allowable subject matter:

Claim 37 and the claim which depends thereon are allowed since claim 37 specifically requires a method of covering the external ear, including a pinna supporting a helix on a person's head, while the hair on a person's head is being treated with fluid including the steps of forwardly folding the helix of the pinna over on itself and applying a shield over the folded ear.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter P. Nerbun whose telephone number is 571-272-4992. The examiner can normally be reached on M-F (1st Week) M-Th (2d Week).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on 571-272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

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Business Center (EBC) at 866-217-9197 (toll-free).

Peter Nerbun
May 26, 2005


Peter Nerbun
Primary Examiner